IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL NO : 2030 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10/02/2004 in WP NO : 10126 OF 1993 on the file of the High Court.)

Between:

The District Collector & Chairman, The Krishna District Scheduled Caste Service Cooperative Society Ltd., at Machilipatnam, Krishna District.

..... APPELLANT

AND

M.Koteswara Rao, s/o Kotaiah, The Krishna District Scheduled Caste

Services Co.op. Society at Machilipatnam, Krishna District.

.....RESPONDENT

Counsel for the Appellant:MR.M.V.S.SURESH KUMAR

Counsel for the Respondent No.: MR.K.G.KRISHNA MURTHY

The Court made the following :

ORDER: (Per the Honourable Sri Justice S.Ananda Reddy)

This appeal is filed by the respondent-appellant aggrieved by the order of the learned single Judge by setting aside the order of punishment imposed on the writ petitioner-respondent herein and ordering reinstatement with all consequential benefits.

The appellant is the Society. The respondent was employed as driver in the year 1992 and he was charge sheeted for certain misconduct and a departmental enquiry was conducted. It was found that the respondent was guilty of the charges. However, while passing the order, though the disciplinary authority felt that it is a case for dismissal or removal of the employee, but by taking a lenient view considering the young age of the respondent, the respondent-appellant has reduced the cadre of the respondent to a lower one i.e., contingent service as night watchman on consolidated pay. The said order was assailed in the writ petition. The learned single Judge found that as the respondent was a regular employee as driver in the appellant-Society, the disciplinary authority has no such power to reduce the status of the respondent to that of a contingent employee and accordingly, set aside the order.

The learned counsel for the appellant contended that the misconduct is so serious, but however, a lenient view has been taken and further, after passing of the impugned order, the respondent worked as a night watchman receiving the salary from the appellant-society. It is further contended that if the appellant is asked to pay all consequential benefits including the wages in the cadre of driver without rendering any services to the Society, it would cause serious hardship to the Society.

The said contention is opposed by the learned counsel for the respondent. However, it is contended by the learned counsel that the respondent is not at fault for working as a

night watchman as he was forced to discharge the duties of a night watchman.

Heard both the counsel and considered the material available on record.

In view of the peculiar facts of the present case, the impugned order may not be sustained legally in view of the infirmity. However, at the same time, the respondent is not entitled for back wages on the basis of the scale of pay of a driver, but for all practical purposes, the services of the respondent as a driver could be counted. Therefore, the appellant-Society is directed to reinstate the respondent as a driver in the time scale payable to that of a driver of the Society as on the date of reinstatement. It is made clear that the respondent is entitled for counting his past service for terminal benefits as a driver.

With the above modification, the writ appeal is disposed of.

The appellant-Society is directed to implement the order of this Court within a period of four (4) Weeks from the date of receipt of copy of this order.

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Justice T.Meenakumari

30th December, 2004

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justice S.Ananda Reddy

Gurc.

To

1. The District Collector & Chairman, The Krishna District Scheduled Caste Service Cooperative Society Ltd., at Machilipatnam, Krishna District.

2. Two CD copies.

HONOURABLE SMT. JUSTICE T.MEENAKUMARI

&

HONOURABLE SRI JUSTICE S.ANANDA REDDY

W.A.No:2030 of 2004

(order pronounced by Sri Justice S.Ananda Reddy.)

30th December, 2004